

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

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SARAH YOON, *

As parent of N.Y., *

Petitioner, *

v. *

SECRETARY OF HEALTH *

AND HUMAN SERVICES, *

Respondent. *

* * * * *

No. 15-224V
Special Master Christian J. Moran

Filed: March 1, 2016

Attorneys' fees and costs; award
in the amount to which
respondent does not object.

Mark L. Krueger, Krueger & Hernandez, S.C., Baraboo, WI, for petitioner;
Althea W. Davis, United States Dep't of Justice, Washington, DC, for respondent.

UNPUBLISHED DECISION ON FEES AND COSTS¹

On February 22, 2016, petitioner filed a stipulation of fact for attorneys' fees and costs. Previously, petitioner informally submitted a final application for attorneys' fees and costs to request \$11,097.12, an amount to which respondent does not object. The Court awards this amount.

On March 4, 2015, Sarah Yoon, mother of N.Y., filed a petition for compensation alleging that N.Y. suffered transverse myelitis as the result of Haemophilus influenzae type b and pneumococcal conjugate (Prevnar) vaccines administered on March 8, 2012. The parties filed a joint stipulation of dismissal pursuant to Vaccine Rule 21(a) on February 9, 2016 and the undersigned issued an Order Concluding Proceedings on February 11, 2016.

¹ The E-Government Act, 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services), requires that the Court post this decision on its website. Pursuant to Vaccine Rule 18(b), the parties have 14 days to file a motion proposing redaction of medical information or other information described in 42 U.S.C. § 300aa-12(d)(4). Any redactions ordered by the special master will appear in the document posted on the website.

Even though the petition was dismissed, a petitioner who brings her petition in good faith and who has a reasonable basis for the petition may be awarded attorneys' fees and costs. See 42 U.S.C. § 300aa-15(e)(1). Here, counsel for petitioner spent time gathering medical records and filing affidavits for petitioner. Counsel consulted an expert and then counsel realized that proof of causation was lacking and the case could not proceed. At this point, counsel took steps to resolve this case relatively quickly so as not to increase costs and expenses unnecessarily. Thus, because petitioner's counsel acted in good faith and there was a reasonable basis for proceeding, petitioner is eligible for an award of attorneys' fees and costs. Respondent does not contend that petitioner failed to satisfy these criteria.

Petitioner seeks a total of **\$11,097.12**, in attorneys' fees and costs for her counsel. Additionally, in compliance with General Order No. 9, petitioner states that she incurred **\$400.00**, in out-of-pocket litigation expenses while pursuing this claim. Respondent has no objection to the amount requested for attorneys' fees and costs.

After reviewing the request, the Court awards the following:

- a. A lump sum of \$11,097.12, in the form of a check made payable to petitioner and petitioner's attorney, Mark L. Krueger, of Krueger & Hernandez, S.C., for attorneys' fees and other litigation costs available under 42 U.S.C. § 300aa-15(e).**
- b. A lump sum of \$ 400.00, payable to petitioner, Sarah Yoon, as parent of N.Y., for costs incurred in pursuit of her petition.**

The Court thanks the parties for their cooperative efforts in resolving this matter. The Clerk shall enter judgment accordingly.

Any questions may be directed to my law clerk, Shannon Proctor, at (202) 357-6360.

IT IS SO ORDERED.

s/Christian J. Moran
Christian J. Moran
Special Master

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As parent of N.Y.,

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No. 15-224 ECF
Special Master Christian Moran

STIPULATION OF FACTS CONCERNING FINAL ATTORNEYS' FEES AND COSTS

It is hereby stipulated by and between the parties, the following factual matter:

1. Mark L. Krueger, Esq., is the attorney of record for petitioner.
2. On or about February 3, 2016, petitioner informally provided a Final Application for Attorneys' Fees and Costs ("Application") to respondent, in which petitioner requested final attorneys' fees and costs in the amount of \$11,097.12. Respondent does not object to the total amount requested. Petitioner also incurred costs in the amount of \$400.00 for the filing fee.
3. The parties now agree that a decision should be entered awarding final attorneys' fees and costs payable to petitioner's attorney and petitioner in the amount of \$11,097.12. In addition, a decision should be entered awarding Petitioner' costs in the amount of \$400.00.
4. Petitioner understands that the payment totaling \$11,497.12 represents all attorneys' fees and costs available under 42 U.S.C. § 300aa-15(e).
5. Nothing in this Stipulation, including the amount set forth in paragraphs 2 and/or 3, should be construed as an admission, concession, or waiver of either party as to any of the matters raised by petitioner's Application, including but not limited to the hourly rates requested and other litigation-related costs.

ATTORNEY OF RECORD FOR
PETITIONER:

s/Mark L. Krueger

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ATTORNEY OF RECORD FOR
RESPONDENT:

s/Althea Walker Davis

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Date: February 22, 2016